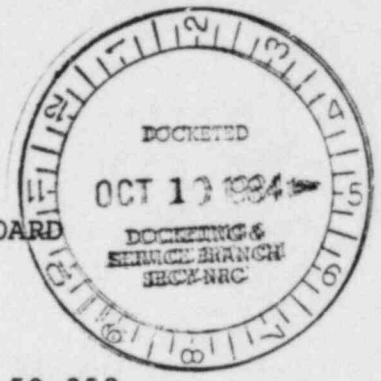


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

In the matter of	)	
	)	
PHILADELPHIA ELECTRIC COMPANY	)	Docket Nos. 50-352
	)	50-353
(Limerick Generating Station, Units 1 and 2)	)	
	)	
	)	

Judge Helen F. Hoyt, Chairman
Judge Richard F. Cole
Judge Jerry Harbour

ANSWER TO APPLICANT'S MOTION
FOR AFFIRMATION OF AUTHORIZATION

Intervenor submits that the Applicant's Motion under 10 C.F.R. §50.57 should be denied for the following reasons:

1. As determined repeatedly by this Board, the jurisdiction over supplemental cooling water issues resides exclusively in the Appeal Board. See Licensing Board Memo. LBP 83-25 (April 27, 1983), pp. 4,13, rev'd other grounds, ALAB 726. (Jurisdiction must be in one place or the other). (See also Metropolitan Edison Co., LBP 82-86, (slip op. at 6, Sept. 29, 1983) 10 C.F.R. §2.764(b) (staff to issue only when authorized by an initial decision); See, e.g,. Order of April 19, 1984, at 3-4). That continues as long as timely motions for reconsideration, or Petitions to the Commission for Review are pending. The action of the Appeal Board in holding that this Board continued to have jurisdiction over such issues after its PID of March 8, 1983 until exceptions

were filed is precedent. (Appeal Board Order of May 2, 1984 (ALAB 726) pp.4-6). Both a Motion for Reconsideration and an Appeal are pending, and others may be filed. Copies of the pending Motion for Reconsideration and Petition are attached hereto as Exhibits A1 and A2.

2. The question at issue has already been determined by this Board, which determination is law of the case; the existence of an supplemental cooling water system (SCWS) environmentally acceptable to the NRC is a prerequisite of an operating license; the fact that additional alternatives would not require environmental reviews or delay the operating license is irrelevant. The question at hand is whether an operating license can issue where the environmental effect of low power testing will include, in all probability, the effect of an SCWS and no SCWS has been approved, and no jurisdiction is retained to preclude use of the unreviewed SCWS. Were the licensee to propose a license which does not authorize drawing from the Point Pleasant SCWS this could be different.

3. This Board, in its Pretrial Order of June 1, 1982, reaffirmed July 14, 1982, and reiterated in the Board's PID dated March 8, 1983, (page 8) and most recently reiterated in the Board's second PID, dated August 29, 1984, have produced an unbroken chain of precedents stating that the timely consideration of environmental impacts of the SCWS is required, and that the timely consideration requirement necessarily entailed the completion of environmental reviews

prior to implementation of the proposal, especially where the only means of implementing a conclusion that environmental effects are unacceptable is to deny or prescribe conditions on the OL (as was done in the Baord's March 8, 1983 PID). (See, e.g., June 1, 1982, at 82-88; July 14, 1982 Memorandum, at 2-3; PID of March 8, 1983, p.8; PID of August 29, 1984 p.1) ("all other issues -- which are prerequisite for authorization of the low power operating licenses: -- "other" can only relate back to the SCWS issues decided March 8, 1983, and referenced immediately prior to the quote).

4. The Board also recognized the interrelationship between the prospective operating license date (no exception being made for low power operating) and the inception of construction of the supplemental cooling water system, and thus with the completion of construction; and the Board recognized, on being so informed, by the applicant, that supplemental cooling water would be necessary for low power testing. (Testimony of Vincent Boyer, following Tr. p. 949, at ¶57; October 4, 1982)

5. Even assuming that the Board determines to reach the issue, despite lack of jurisdiction and despite the fact that it has already decided the question, the Board should deny the Motion for the reason that the Applicant has chosen to stubbornly persist in an Application under 10 C.E.F. §50.57 even though it cannot operate in accordance with the Application, even if granted operating privileges. The

application (EROL 2.2 and SER - rev. Sept. 4, 1984) represents that supplemental water will be available for operations and cooling tower backup, respectively. This is not true. Thus, the draft OL cannot be issued because applicant cannot operate in accord with the Application, as required by 10 C.F.R. §50.57(c) and 10 C.F.R. 50.57 (a)(1), (a)(2), and (a)(3).

6. As stated by the applicant in amending its SER on on September 4, 1984, Open Issue No. 2 (Kemper to Schwencer) regarding cooling tower backup, the supplemental cooling water system is a safety related as well as an environmental component of the proposed operation. The Perkiomen intake is expressly relied on therein for emergency water, but since the flow of the Perkiomen is not available to applicant most of the year, this necessarily entails dependence on Point Pleasant. (E.g., EROL, at 3.3-3, Question E 240.3 (Section 2.4-3) following TR 950.) (Perkiomen only available 4% of days.)

7. In these circumstances, giving special consideration to applicant's cries of urgency would be rewarding bad management. As stated in the Appeal Board's September 26, ALAB 785:

> There is no question that PECo has some formidable obstacles to surmount if it is to operate both Limerick Units 1 and 2 in the manner currently proposed. Whether PECo will change its plans to effect an easier resolution of the problems confronting it is a matter for PECo's management, and possibly its shareholders, to decide. (ALAB 785, at 62)

Indeed, it is clear on the face of the record, and on the basis of other evidence offered by the applicant elsewhere, that supplemental cooling water from the Delaware (or elsewhere) may or will be necessary for the low power testing, or at the very least, will be necessary in the likelihood that such testing extends into May, 1985, and later. Contrary to the unsupported statement in the Applicant's Motion, nowhere in the application or the record is it or can it be shown that the Applicant will or can conduct low power testing without cooling water other than from the Schuylkill and Perkiomen, as presently restricted. Such an important fact cannot be presumed.

8. Moreover, as recognized in this Board's Order of August 29, 1984, the Board's authorization for low power testing applies to both Unit I and Unit II, so that even if Unit I does not require fuel for low power testing, and even if the grant of low power testing does not of necessity entail the ultimate grant of operating license, which would so involve supplemental water; then clearly, the authorization to issue a low power license for Unit II will entail the use of supplemental cooling water. (Order, p. 264.)

9. The Operating License proposed for issuance by the staff confirms the invalidity of present authorization: it would state, contrary to fact, that alternatives have been studied and an ultimate cost benefit evaluation has been made. (See Letter to Bauer, October 2, 1984, and draft OL enclosed.)

10. In the alternative, the Board would be authorizing a useless or frivolous act in allowing low power testing, when full operations will require supplemental cooling water, and no supplemental cooling water system has completed environmental review by this Board. The cost and benefits cannot be subsumed in any existing overall cost benefits evaluation, as contemplated by the Board's PID, since no such overall cost benefit evaluation can be made while no determination has been made that the impacts of the supplemental cooling water system are immaterial or de minimus, in light of ALAB 785.

11. In pleadings and testimony before the Bucks County Court, PECo itself acknowledged that the supplemental cooling water system was a necessary element in the operating license determination. Reference is made to Testimony of Vincent Boyer before the Bucks County Court, November 29, 1983, and, e.g., deposition testimony by Messrs. Bradley and Pyrih (Trial Transcript not prepared).

12. Similarly, the staff has acknowledged the need for consideration of the environmental impacts of the supplemental cooling water system prior to issuance of the operating license (even if not safety related). This occurred in a letter from William Dircks to Congressman Kostmayer, dated April 2, 1984, pages 1 and 3 and in a staff decision by Harold Denton dated June 29, 1984, fn.2. Both suggest review of cooling water systems (they are referring to substitute systems), could delay Limerick's operating

license. See also PECo Memo of Informal telecon with NRC staff, 4/17/84. Surely this must be as true of Point Pleasant as it is of alternatives, where the Appeal Board has now determined that complete consideration has not been given to the impacts on the Point Pleasant Historic District and the Delaware River salinity, as well as possibly Delaware River water quality and the Perkiomen Creek.

13. Applicant's unsubstantiated argument that it will suffer losses of $1 million daily by delay also cannot be accepted as true. It assumes two unproved facts: one is that Applicant will ultimately succeed in getting a license at all. Applicant's second assumption of fact, equally unstated, is that operating Limerick will be more economical than shelving it. In fact, Applicant has failed to inform the Board that on September 28, 1984, the Pennsylvania PUC granted a petition filed by Applicant to insure that if and when Limerick I comes on line, ratepayers will absorb the interest cost retroactively to the present. In these circumstances, it may a matter of economic indifference to Applicant <u>when</u> Unit I goes on line. Nor can it be argued that the Board should be concerned about the alleged cost of delay to the ratepayers, since there has never been any finding in these proceedings or otherwise, based on current cost of the proposed generating station as compared to fossil fuel cost for applicant's existing plants, that the utilization of Unit I will result in a cost savings to the ratepayers. To presume the damage to Applicant or its

ratepayers from delay, therefore, is either to assume that Unit I will go on line, thereby prejudging matters at issue in these proceedings, or that it should go on line in the ratepayer's interest, thereby prejudging a cost benefit analysis which has not been made. Nor can it be assumed that delay will result in net cost to ratepayers, even if Unit 1 goes on line eventually; delay may save money. Nor can this be considered an academic question, in light of the conclusion of the State of New York regarding Shoreham, that it may be more economically for the ratepayers to abandon a completed nuclear facility, rather than operate it. Note that the argument here is not that the Board should conclude that Limerick I is not economic, and/or that acceleration is not beneficial; but only that no assumption can be made by this Board in passing upon the Applicant's Motion.

14. Intervenor submits that the time has finally arrived at which serious consideration must be given, by the appropriate organ within the NRC, to a sound and responsible supplemental cooling water program for Limerick. Applicant's assurances and claims have proven worthless. In 1983, PECo assured the Appeal Board that all permits for Point Pleasant had been issued, and that Point Pleasant could be constructed, in good time to meet the needs of Limerick, including those for low power testing. Repeated statements of like kind have been made, but what has emerged instead, including what has emerged in the Appeal Board of this Commission, shows that an ill-conceived project,

planned without regard to such environmental effects as channelization, intake location, pollution importation into upstream creeks, impacts on valuable historical resources, and inconsistency with water quality objectives, has turned into a race to find compromises to patch-up the scheme, as these effects have been gradually uncovered. Rather than a full history of adequate environmental review, there has been, on the contrary, a patchwork scrambling to cover up problems as new problems arise, in what may be called the most extraordinary coverup since Watergate. (See Memo of 12/15/72, previously furnished to Baord 7/5/84.)

15. The original inspiration for the diversion from the Delaware River was a dam to be constructed far upstream on the Delaware, Tocks Island Reservoir, which would, as it was planned, have provided more secure resources than are available in the Schuylkill River Basin. (See DRBC Approval, 1973 and 1975.) The Tocks Island Reservoir does not exist, and will not exist in this generation. On the other hand, Blue Marsh, which was not thought to be available, because two units at Limerick would require a commitment of the entire reservoir, and because it would not be ready on time, has been completed, is ready, and because its waterpool has been enlarged, and Limerick is only one unit, at present, can easily handle applicant's needs. (See Goodell Testimony, Exhibit A to Appeal Board Brief.)

16. Whatever relevance the Point Pleasant construction status and position of the owner Neshaminy Water Resources

Authority, may have, the fact is that the project is stopped. The last construction equipment, a temporary bridge over the historic Delaware Canal, was physically removed, and cut up into pieces, on September 27-28, 1984. Construction contracts have been terminated. The NWRA and the contracted operator and lessee, Bucks County, Pennsylvania, have decided not to build the project.

17. There can be no doubt that PECo has a substitute supplemental cooling water system available under wraps. In July, PECo testified under oath that, with maximum speed, the supplemental cooling water system could be ready in the Spring, only if construction was started by September 1. Construction has not been started, it is now October 10th, and there is no prospect for an early start of construction. Yet, on September 14, 1984, despite these facts, PECo testified before a Special Committee of the Pennsylvania General Assembly that it is confident that it will have supplemental cooling water in the spring. Similarly, while professing to be concerned about Point Pleasant, PECo senior executives told rating agencies in June, 1984 and repeated under oath in Bucks County Common Pleas on the witness stand in August, 1984, that they were confident that substitute cooling water sources would be available. (See NWRA Trial Exhibits 23) In these circumstances, there is no justification for refusing to consider these alternatives, there is no urgency, and no need to rush to judgment to permit PECo

to continue its efforts to implement Point Pleasant through fear.

18. In ALAB 785, the Appeal Board stated that PECo's directors and possibly its shareholders were the parties concerned. The other side of the coin is, whether the NRC will, in that context, reflect a deliberative posture, or permit its processes to be used to permit PECo to continue to avoid the need to identify the substitute supplemental cooling water system.

CONCLUSION

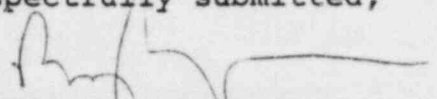
This Board should not permit the NRC to be stampeded into closing its eyes to reality. Given that review of Point Pleasant by this Board is not completed, that obvious alternatives have not been identified or considered and that the water is or may be needed for low power testing, for safety as well as environmental reasons, and that PECo holds the key to the door, the Board should not ignore the issues. It should instead, require the applicant to assure the Board that the needed cooling water is now available, prior to authorizing the operating license, even limited to low power testing.

In any event, for the reasons stated, the Board cannot authorize an OL for low power testing.

The following appendices correspond to the numbered points above, and provide, in the time available to

the Intervenor, the documented sources for the factual statements in the Answer.

Respectfully submitted,



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Dated: October 10, 1984
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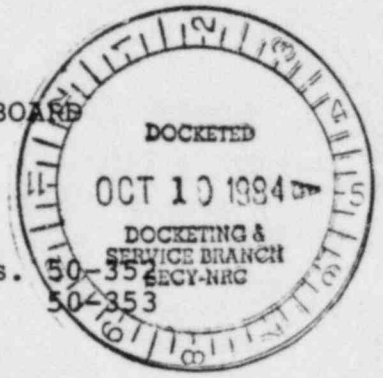
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD



In the matter of	)	
	)	
PHILADELPHIA ELECTRIC COMPANY	)	Docket Nos. 50-352
	)	50-353
(Limerick Generating Station, Units 1 and 2)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer by mailing a copy of the same to the following persons this 10th day of October, 1984.

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++ with Exhibits

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	:	
	:	
Philadelphia Electric Company	:	Docket No. 50-352-OL
	:	50-353-OL
(Limerick Generating Station, Units I and II)	:	
	:	

PETITION FOR RECONSIDERATION

Del-AWARE Unlimited, by its counsel, hereby petitions for reconsideration of certain aspects of ALAB 785.

These are directed at certain legal conclusions of the Board, especially those related to discharges into the East Branch Perkiomen Creek, and alternatives.

EAST BRANCH PERKIOMEN

As submitted to the Licensing Board, in October, 1981, Del-AWARE formulated its contention NoV-16 to the Licensing Board as follows:

> The discharge of the water into the Perkiomen, and into the Schuylkill will cause toxic pollution and thus substantially and adversely affect fishing and drinking water supplies. The discharge into the Perkiomen will also cause destabilization, flooding and otherwise adversely affect the Perkiomen.

In addition, Del-AWARE stated the basis of its contention as follows:

> Basis: EPA water quality surveys show the Delaware River to be extremely toxic. There is no such showing as to Perkiomen or Schuylkill water. Applicant and DRBC have wholly failed to review this. EPA has made no determination, and DER's water quality determination in connection with the NWRA intake does not address Applicant's discharges and is under appeal in the

Pennsylvania Environmental Hearing Board.

In its June 1, 1982 Order, the Board found the contention and basis inadequate. (Slip Opinion, pp 98-99)

Long afterward, in the Spring of 1984, Del-AWARE obtained a copy of a PECo 1972 memo indicating that the Company had clearly opted to cause erosion in the East Branch in order to obviate the biological concerns which NRC scientists had expressed with regard to channelization, (the intent up until then).

A copy of this memorandum was furnished to the Licensing Board and to this Board. (Motion of July 5, 1984, refiled August 6, 1984)

In its appeal to this Board, Del-AWARE assigned as error a refusal of the Licensing Board to admit the contention.

The opinion of this Board at ALAB 785 was ambiguous as to whether it referred to this issue. At one point, page 26, it refers to the Contention V16 as related to impact on "receiving streams". This refers to the East Branch Perkiomen; in the context of the contention as formulated by Del-AWARE, there is no other interpretation. In addition, the ALAB 785 authorizes Del-AWARE to reformulate its contentions originally advanced as V16; it does not distinguish between the Del-AWARE formulation and subsequent revisions.

Nevertheless, Del-AWARE is concerned that, because of the reference to "salinity" repeatedly in ALAB 785, which is not a problem in the East Branch Perkiomen, the parties and Licensing Board may construe the Board's remand as limited to salinity in

the Delaware River, and not to include the "receiving streams" as originally proposed by Del-AWARE in contention V-16.

In addition to this uncertainty, ALAB 785 does not reflect any disposition of the motion regarding the East Branch Perkiomen, and indeed does not mention the East Branch Perkiomen by name as a water quality contention. Del-AWARE therefore respectfully requests that the Appeal Board clarify and reconsider its decision so as to make it clear that Contention V-16 should have been admitted, and to allow hearings thereon, or to permit a reformulated contention.

ALTERNATIVES

The Appeal Board, in ALAB 785, has fallen victim to a misuse of statistics, and has therefore found that there is no factual basis for the consideration of alternatives by the Licensing Board. (ALAB 785, at 58-60) The fallacy relates to the assertion by applicant and others supporting the project that with one unit rather than two, Limerick would still require water sources other than the Schuylkill (under existing restrictions) almost as many days of each year as with two units. So far, the statement is true.

The fallacy is the assertion that that fact has anything to do with the feasibility of Schuylkill River alternatives. The feasibility of Schuylkill River alternatives, in fact, is not determined by the relative number of days that water is required; it is controlled principally by the amount of water required in a year. One unit at Limerick would use approximately 20 mgd; two units would use approximately 40 mgd; therefore, with one unit at Limerick, half as much supplemental cooling water is needed as

with two units. Since reservoirs, including but not limited to Blue Marsh Reservoir, are available, the number of days of demand and the demand each day are of little importance.

If this fallacy is corrected, it becomes clear that, contrary to the conclusions of the Licensing Board and to this Board's ALAB 785, the difference between two units and one unit, in terms of need for supplemental cooling water, represents a dramatic (50%) differential.

It was based on this fact that appellant Del-AWARE sought to show the Licensing Board that Blue Marsh Reservoir, together with other Schuylkill River Sources, would clearly provide an adequate alternative for one unit at Limerick, but not clearly for two units. This alternative had not been considered in the FES at either the construction or licensing stage. The reason was that the Commonwealth of Pennsylvania and DRBC had informally indicated to PECo in 1969 and 1970 that they would not allocate all of water supply storage in the reservoir to one large industrial user. (See ES DRBC E15 p.4, (1973) Of course, in so stating, they were assuming two units at Limerick. (Similarly, Mr. Hansler's testimony purported to present only his views, and is not conclusive), nor does he comment on the liklihood of changes in the current restrictions.

By definition, it follows, that with one unit at Limerick, only half of the water supply storage would be involved. Moreover, as Del-AWARE showed in its previous submissions, the water supply storage at Blue Marsh has been significantly modified, such that there is now 25% more storage.

Thus, the dramatic differential in water requirements

in one unit versus two units makes it possible, both physically and within policies of water resource agencies, to consider the Blue Marsh as a full or partial alternative for one unit at Limerick.

In these circumstances, the Licensing Board should have admitted a contention based on the increasing probability that only one unit at Limerick will be constructed. At least, pursuant to NEPA, the probability of Limerick being only one unit is sufficient to require identification and consideration of such an alternative.

These facts, combined with the support of Fish and Wildlife Service for the use of Blue Marsh, thus demonstrating the feasibility of its use in relation to the effect on other interests, requires its consideration.

CONCLUSION

Based on the foregoing, intervenor Del-AWARE Unlimited respectfully requests that this Board reconsider ALAB 785 in the respects indicated, and issue a modified opinion accordingly.

Respectfully submitted,

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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	:	
		Docket No. 50-352-OL
Philadelphia Electric Company	:	50-353-OL
(Limerick Generating Station, Units I and II)	:	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petition for Reconsideration by mailing a copy of the same to the following persons this 5th day of October, 1984.

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